CF0000057458

(2)

IN THE HIGH COURT OF MADHYA PRADESH AT : JABALPUR

Cr. Appeal No. 453 of 1990.

Appellant : Shiv Prasad Rajwar, Son of-Jadu Rajwar, Aged-35 years. Cultivator, r/o Village-Bhithikalan P.S. Ambikapur, Distt. Surguja (MP)
(In Jail)

Versus

Respondent : State of M.P.

Criminal Appeal U/s 374 (2) Cr.P. Code.

Conviction	Sentence
U/s 307 IPC	R.I. 4 years. and fine of Rs. 2000/- in default of payment of fine further R.I. for 1 years

3466

XI-HC-22

(29)

A.F.R

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.A. 453/90 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

13.06.2006

Shri Manoj Mishra, Counsel for the appellant.

Shri Sanjeev Kumar Agrawal, P.L. for the State.

Shri Manoj Mishra, learned counsel for the appellant at the very outset submitted that he does not assail the impugned judgment dated 16.4.90 passed in Sessions Trial No.88/88 by the Sessions Judge, Ambikapur, on merits but would argue only on the question of sentence.

As a result of submission made above, this appeal was heard only on the question of sentence.

2. Brief facts are that the appellant is brother-in-law of Kendi Bai, P.W.7 aged about 45 years. Jogendra Prasad is the son of Kendi Bai. The appellant was annoyed since Jogendra Prasad had cut the bund of the agricultural field. Annoyed by this, on 16.8.1987, the appellant went to the house of Kendi Bai and assaulted Kendi Bai thrice with an iron rod on the head. At that time Kendi Bai was carrying her small child in the arms. She attempted to prevent the assault by her right hand, as a result of which, her right index finger got amputed. Due to repeated assaults by the iron rod, Kendi Bai sustained three lacerated wounds on the frontal region of the scalp from right to left in size 2.5 cm. x .25 cm. x skin deep, 10 cm. x .5 cm. x bone deep and 12 cm. x .5 cm. x muscle deep with blood oozing from the wound. Kendi Bai was hospitalized till 5.9.1987. It was opined by Dr. P. C. Deshmukh P.W.1

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.4531/10 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that the injury sustained by Kendi Bai was dangerous to life and if not treated timely could have resulted in her death.

3. Relying upon the evidence led by the prosecution and the nature of the injuries sustained by Kendi Bai, learned Trial Judge convicted the appellant under Section 307 I.P.C. and sentenced him to undergo rigorous imprisonment for four years and a fine of Rs.2000/-, in default of payment of fine to undergo imprisonment for one year.

4. During the course of this appeal, only an affidavit purporting to be sworn by Kendi Bai and bearing her thumb impression was filed in the Registry on 23.1.2002 stating that after the death of her husband, she was wholly dependent upon the appellant, and therefore, wanted to compound the offence. Neither an application was filed by Kendi Bai nor did she appear before the Court.

5. Learned counsel for the appellant placed reliance on a judgment of this Court in *Umashanker @ Babloo v. State of Chhattisgarh* in Criminal Appeal No. 988/2004 and pressed the following circumstances to support the argument that the sentence awarded to the appellant should be reduced to already undergone by him:

A) that the appellant was the brother-in-law of the injured Kendi Bai.

B) that the incident had occurred in a sudden heat of passion and was not premeditated.

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A 453/90 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित – 3 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

C) Kendi Bai, the injured, was wholly dependent upon the appellant and was residing with him.

D) Kendi Bai had sworn an affidavit that she wanted to compound the offence.

6) On the other hand, Shri Sanjeev Kumar Agrawal, learned counsel appearing for the State has opposed the prayer and has argued that considering the repeated blows by an iron rod with such severity that despite resistance by Kendi Bai, her right index finger was not only cut but she also sustained three lacerated wounds on vital part i.e. the frontal region of scalp. The sentence awarded by the learned trial Judge was adequate and no reduction was called for.

7) Having heard the rival contentions, I have perused the record of the Sessions Trial No.88/88. I have also perused the judgment rendered in *Umashanker @ Babloo v. State of Chhattisgarh* (supra) cited by the counsel for the appellant. In that case a single injury by knife was caused on the right side of chest lower part. The assault was not premeditated. A genuine compromise had taken place. The appellant had under gone sentence for two years and eight months. The appellant was aged 19 years. Relying upon *Badrilal v. State of M.P.* **(2005) 7 SCC 55**, the substantive sentence of imprisonment for seven years was reduced to a period already undergone by the appellant.

8) A perusal of the record shows that the impugned judgment was delivered on 16.4.1990 and the appellant was granted bail on 10.05.90,

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. A. 453/90 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

thus, within a period of less than one month. The evidence of Kendi Bai P.W.7 clearly shows that the assault on her was not upon a sudden heat of passion or sudden quarrel but was premeditated since the appellant, feeling offended due to the act of her son-Jogendra Prasad, came with fully preparation to assault her. Thus the act of the appellant was premeditated. No provocation was given by Kendi Bai. During the occurrence, she was carrying a small child in her arms. The severity of assault can be gauzed from the fact that despite an attempt by Kendi Bai to block the assault by her right hand, not only her right index finger got amputed but she received a lacerated wound on vital part i.e. the frontal region of scalp. It is also seen that the appellant even thereafter repeatedly assaulted Kendi Bai twice with the iron rod on the scalp. The testimony of Dr. P.C. Deshmukh P.W.1 clearly shows that the injuries sustained by Kendi Bai, if not treated immediately could have resulted in her death.

9) Considering the weapon of offence, age of the injured, the vital parts on which injury was caused, the force with which the repeated blows were inflicted on the hapless lady, the absence of any provocation by Kendi Bai at the time of occurrence, and the injuries sustained by Kendi Bai I am of the considered view that sentence awarded by the learned trial Judge is already lenient enough and does not call for any further reduction. The case law cited by the learned counsel for the appellant is distinguishable since in this case repeated

(33)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A-453/00 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

blows by iron rod were given on the vital part of Kendi Bai endangering her life. While there is nothing to show that the assault was in a sudden heat of passion, it appears from the record that the assault was premeditated. So far as the affidavit filed on 23.1.2002 is concerned, neither any application was filed by Kendi Bai nor did she appear before the Court. The mere fact that Kendi Bai was dependent on the appellant does not in any manner dilute the offence or call for any interference in the sentence awarded by the learned trial Judge. The appellant had undergone sentence for less than a month in this case.

10) For the aforesaid reasons, I am of the considered opinion that the conviction of the appellant under Section 307 I.P.C. and the sentence awarded thereunder by the learned trial Judge does not call for any interference. In this view of the matter, this appeal being devoid of merit is dismissed.

11) The appellant shall surrender before the Sessions Judge, Ambikapur on 13th July 2006 for undergoing the sentence. A copy of this judgment be sent to the Sessions Judge, Ambikapur for reporting compliance to this Court.

Sd/-
Dilip Raosaheb Deshmukh
Judge

29.6.06

[पीछे देखिये